

ARKANSAS SUPREME COURT

No. 06-332

DARRELL DENNIS
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered June 7, 2007

PRO SE APPEAL FROM THE
CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2005-873, HON.
ROBERT HOLDEN WYATT, JR.,
JUDGE

REVERSED AND REMANDED.

PER CURIAM

In 2005, appellant Darrell Dennis, an inmate incarcerated in the Arkansas Department of Correction (“ADC”), filed a petition for declaratory judgment and writ of mandamus in Jefferson County Circuit Court, alternatively seeking either a declaratory judgment that he was entitled to additional good time credit that the ADC had failed to award to him or issuance of a writ of mandamus. The appellee, Larry Norris, Director of the Arkansas Department of Correction, filed a response. The circuit court appears to have treated the response as a motion under Ark. R. Civ. P. 12(b)(6) and dismissed the petition, finding that petitioner had failed to state facts in support of his claims. Appellant now brings this appeal of that order.

While the circuit court treated the response as a motion under Rule 12(b)(6), there was no motion filed. Nor did the response specifically allege that appellant had failed to state a cause of action, instead arguing that appellant had already received the relief he requested, in that he had

received all credit due. The court's order did not address the arguments or provide its basis for the conclusion that the petition did not state any facts to support a cause of action. Moreover, although citing Rule 12(b)(6), the court dismissed the petition with prejudice, as if ruling on the merits of the argument. Failure to state a claim, unlike the lack of material disputed facts, results in the matter being ended without prejudice, so that the plaintiff is provided the chance to plead further. *See West v. Searle & Company*, 305 Ark. 33, 806 S.W.2d 608 (1991).

We do not reach the merits of appellant's argument, as it is not clear to us whether the circuit court did so. We therefore reverse and remand to the circuit court to clarify its ruling and provide an appropriate disposition. The new order should indicate whether the court made a determination that appellant had failed to state a claim and dismiss without prejudice, or should address the issues so as to dismiss with prejudice. This clarification is essential to our review in this case.

Reversed and remanded.